IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.713 OF 2007
CONNECTED WITH
COMPANY APPLICATION NO.771 OF 2007

In the matter of Scheme of Arrangement between Balkrishna Industries Ltd. and Balkrishna Paper Mills Ltd. and Balkrishna Synthetics Ltd. and their respective shareholders

Balkrishna Industries Ltd. .. Petitioner.

WITH

COMPANY PETITION NO.714 OF 2007
CONNECTED WITH
COMPANY APPLICATION NO.772 OF 2007

In the matter of Scheme of Arrangement between Balkrishna Industries Ltd. and Balkrishna Paper Mills Ltd. and Balkrishna Synthetics Ltd. and their respective shareholders

Balkrishna Paper Mills Ltd. .. Petitioner.

WITH

COMPANY PETITION NO.715 OF 2007
CONNECTED WITH
COMPANY APPLICATION NO.773 OF 2007

In the matter of Scheme of Arrangement between Balkrishna Industries Ltd. and Balkrishna Paper Mills Ltd. and Balkrishna Synthetics Ltd. and their respective shareholders

Balkrishna Synthetics Ltd. .. Petitioner.

Mr.Hemant Sethi i/b Hemant Sethi & Co.
for the petitioners.

Ms.Heena Shah with Mr.A.M.Sethna and Mr.G.C.Mishra

for the Regional Director.

CORAM : D.B.BHOSALE, J.
DATED : 10TH OCTOBER, 2007.

P.C.:

1. The sanction of the Court is sought to a Scheme of arrangement under Sections 391 to 394 of the Companies Act, 1956.

2. The scheme is presented for transfer of paper business of Balkrishna Industries Ltd. (for short "demerged/transferor company") to Balkrishna Paper Mills Ltd. (for short "1st resulting/transferee company") and transfer of textile business to Balkrishna Synthetics Ltd. (for short "2nd resulting/transferee company").

3. Counsel appearing on behalf of the Petitioners has stated before the Court that insofar as the transferor is concerned : (i) the meeting of equity shareholders was held on 25.8.2007 in which the scheme has been approved unanimously; and (ii) individual notices were dispatched to all the secured and unsecured creditors as per the order dated 20th July, 2007 issued by this Court while dispensing with their meetings.

4. Insofar as the transferee companies are concerned, the Court has been informed by the learned counsel that : (i) all the equity Shareholders of both the companies have granted their consents and in view thereof the meetings were dispensed with by the order of this court; (ii) there are no secured or unsecured creditors of these two companies.

5. The Regional Director has raised the following objection:

> ".... .... as per clause 5 and 11 of the scheme the Resulting Company will discharged in consideration in cash within 45 days from the effective date which amounts to sale and attracts the provisions of section 293(1)(a) of the Companies Act, 1956. The petitioners may be directed to follow the procedure as prescribed under section 293(1)(a) instead of section 391 and 394 of the Companies Act, 1956."

6. In reply to this objection Mr.Sethi, learned counsel for the petitioners invited my attention to the order passed by the learned Single Judge in company petition No.758 of 2005 connected with civil application No.540 of 2005 in Tatanet Services Ltd. and Tata Services Ltd. decided on 3rd March, 2006 and submitted that a similar objection was raised in that petition by the Regional Director. Interalia, the facts and the circumstances against which the objection was raised in that petition and the

objection raised in the present petition are similar. The learned Single Judge of this court after considering the objection has observed in paragraph 2 thus:

> "2. The only objection raised by the Regional Director is that the Petition under sections 391 and 394 of the Companies Act is not necessary and the petitioners can avail of the provisions of section 293(1)(a) of the Companies Act. That such order can be passed in an application under sections 391 and 394 of the Companies Act is not in dispute. If the petitioners have chosen a more elaborate route, they cannot be faulted for the same."

5. Ms.Shah, learned counsel for the Regional Director fairly stated that the objection was similar and the order passed by the learned Single Judge on 3rd March, 2006 was not carried in appeal by the Regional Director. In the circumstances the objection raised by the Regional Director is rejected.

6. Upon perusal of the entire material placed on record, in my opinion, the scheme is fair and reasonable and is not violative of any provisions of law and is not contrary to any public policy. None of the parties concerned has come forward to oppose the scheme. Moreover, the Regional Director has stated that the scheme as proposed is not contrary to the public interest or prejudicial to the interest of the shareholders or creditors.

7. There is no objection to the scheme and since all the requisite statutory compliances have been fulfilled, Company Petition No.713 of 2007 is made absolute in terms of prayer clauses (a) to (c) and company petitions filed by the transferee companies are made absolute in terms of prayer clause (a).

8. The transferee-companies to lodge a copy of the order and the scheme with the concerned Superintendent of Stamps for the purpose of adjudication of stamps duty payable on the same, if any, within 30 days of obtaining a certified and/or an authenticated copy of the order.

9. The Petitioners in all the three petitions to pay costs of Rs.2500/- each to the Regional Director to be paid within four weeks from today.

10. Filing and issuance of drawn up order is dispensed with.

11. All authorities concerned to act on a copy of this order duly authenticated by the Registry.

(D.B.BHOSALE, J.)